

Remarks

Rejection Under 35 U.S.C. § 103

Claims 1-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,224,573 to Yeager *et al.* ("Yeager"). Applicants respectfully traverse this rejection to the extent that it is applied to the claims as amended.

Yeager

Yeager discloses a disposable applicator for delivering substantially non-runny formulations. Yeager's applicator contains a housing (14), which includes a housing chamber (50) with a tapered tubular wall (48). The tubular wall (48) has an upper opening (60) and a lower opening (64). The lower opening (64) has a greater inner circumference than the upper opening (60) (*see* col. 4, lines 1-10). The housing chamber (50) is filled with medicament by an automated process, which places the medicament into the housing chamber through the lower opening (64). Yeager emphasizes that the tapering of the inner surface of the housing chamber (50), facilitates filling (*see* col. 5, lines 62-63). After filling the housing chamber (50) with medicament, the applicator is then fully assembled by inserting the plunger (16) into the housing chamber (50) (*see* col. 5, lines 64-66, where Yeager states that "the plunger 14 [*sic*] [is inserted] into housing chamber 50"). In Yeager, delivery of the medicament to a patient requires depressing the plunger and pushing the medicament out of the housing chamber into the dispensing canal (84) and through the dispensing opening (90) (*see* col. 6, line 65 until col. 7, line 4 and Figure 7).

AMENDMENT AND RESPONSE TO OFFICE ACTION

Yaeger does not disclose or suggest the pending claims

Claim 1, as amended, specifies that medication chamber is located at the proximal end of the applicator and that the proximal end of the applicator contains an opening suitable for filling the medication chamber with the pharmaceutical composition and dispensing the pharmaceutical composition from the medication chamber. Claim 6, as amended, specifies that applicator is breech filled with the pharmaceutical formulation, and specifies that that medication chamber is located at the proximal end of the applicator. Support for the amendments to claims 1 and 6 can be found in the specification at least at page 3, lines 28-29; page 5, lines 14-16 and 20-23 and Figure 1B. Thus, the amended claims specify that the applicator is designed to be breech filled, i.e. filled through the opening at the tip of the applicator, which is the same opening from which the medicament is administered to a patient. The applicator is designed so that only the medication chamber contains the medicament; the rest of the applicator barrel does not contain the medicament to be administered.

In contrast to the amended claims, Yaeger requires the filling of the entire housing chamber with a medicament, and then placing the plunger in the applicator barrel (i.e. housing chamber). Thus the medicament is placed in one, wide opening of the applicator, and then is administered to a patient through a narrower opening at the opposite end of the applicator. Yaeger does not disclose or suggest an applicator suitable for breach filling. In fact, Yaeger teaches away from such an applicator. Yaeger indicates that his design, which requires placing the medicament in through a large opening, is well-suited for automated filling. Yaeger contains

U.S.S.N. 10/759,695

Filed: January 16, 2004

AMENDMENT AND RESPONSE TO OFFICE ACTION

no teaching or suggestion to modify his applicator so that it can be breach-filled through the narrowest opening in the applicator. Therefore claims 1-9, as amended are non-obvious in view of Yaeger.

Claim Objections

Claim 9 was objected to for repeating the phrase "of the". In response, the duplicated phrase has been deleted from claim 9 as amended.

Additional amendments to the claims

Claim 3 was amended to place a period at the end of the claims. New claim 10, which depends from claim 6, has been added. Support for new claim 10 can be found in the specification at least at page 4, lines 29-30.

Allowance of claims 1-10, as amended, is respectfully solicited.

Respectfully submitted,



Rivka D. Monheit
Reg. No. 48,731

Date: March 1, 2006

PABST PATENT GROUP LLP
400 Colony Square, Suite 1200
1201 Peachtree Street
Atlanta, Georgia 30361
(404) 879-2152
(404) 879-2160 (Facsimile)